Supreme Court, U.S.
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No. ____

In the Supreme Court of the United States

Keith McFarland,
Petitioner,
V.

Bryan Cave LLP, Paul Weil. Marshall & Stevens, Incorporated, Carl G. Hogan, Jr. Brian J. Hogan and David Hogan,
Respondents (all).

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether threats by attorney to force the production of a false business appraisal report by an appraiser were an attempt to obtain property from another for purposes of the Hobbs Act.

II.

Whether the "termination of an employee" who refused to join a conspiracy following threats of extortion in violation of the Hobbs Act was an act of racketeering proscribed by the Racketeer Influenced and Corrupt Organizations Act ("RICO").

III.

Whether a conspiracy under 18 U.S.C. § 1962(d) to violate subsections (a), (b) or (c) thereof, which by its terms authorizes the act which causes injury, is the proximate-cause of that injury.

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 1

A. Summary of Allegations of the Second Amended Complaint 2

B. The Decisions Below 4

REASONS FOR GRANTING THE PETITION 5

I. The Decision Below Undermines this Court's Decision in *Scheidler II* and the Hobbs Act 6

(a) THE HOBBS ACT 7

(b) *SCHEIDLER I, II & III* 8

(c) CIRCUIT COURT'S DECISION 10

(d) MCFARLAND'S CASE 11

II. The Decision Below Undermines this Court's Decision in *Beck v. Prupis* and the RICO Act 13

III. "Otherwise Wrongful" Act Under RICO 18

CONCLUSION 20

APPENDIX . . . . . *SEPARATE APPENDIX* at Page 1a

Circuit Court Opinion (Rule53) 1a

District Court Decision 9a

Order Denying Rehearing 18a

Rico Act (18 U.S.C. § 1962 & 1964) 20a

Hobbs Act (18 U.S.C. § 1951) 22a

Second Amended Complaint 24a

Exhibits 54a

TABLE OF AUTHORITIES

Cases **Page**

Anza v. Ideal Steel Supply Corp.,
126 S.Ct. 1991 (2006) 16, 18

Beck v. Prupis, 162 F.3d 1090 (11th Cir. 1998) 18

Beck v. Prupis, 529 U.S. 494 (2000) . . 4, 5, 16, 18, 20

Holmes v. Securities Investor Protection Corp.,
503 U.S. 258 (1992) 15, 16

National Organization for Women, Inc. v. Scheidler,
510 U.S. 249 (1994) 8

Robbins V. Wilkie, 433 F.3d 755,
(10th Cir. 2006) 12

Scheidler v. National Organization of Women,
126 S.Ct. 1264 (2006) 8, 10

Scheidler v. Nat'l Org. of Women,
537 U.S. 393 (2003) 5, 6, 8, 9, 11-13

Sedima, S.P.R.L. v. Imrex Co.,
473 U.S. 479 (1985) 14, 16, 18

U.S. v. Sweeney, 262 F.2d 272,
(3rd Cir. 1959) 12

United States v. Castor, 937 F.2d 293,
(7th Cir.1991) 12

United States v. Green, 350 U.S. 415 (1956) 12

United States v. Tropiano, 418 F.2d 1069,
(2nd Cir. 1969) 9

Statutes

18 U.S.C § 2154 1

18 U.S.C. § 1951,
(Hobbs Act) 1-3, 5-7, 9, 10, 13, 17, 20

18 U.S.C. § 1961(1) 13, 14, 16

18 U.S.C. § 1962(d) 14

18 U.S.C. § 1962(d) 14, 19, 20

18 U.S.C. § 2101 1

18 U.S.C. §§ 1961-1968 (RICO) . 1, 10, 13, 14, 16, 19

28 U.S.C. §§ 1331 2

Fed. R. Civ. P. 12(b)(6) 2

Rules

S. Ct. Rule 13.3 1

OPINIONS BELOW

The opinion of the Court of Appeals is reported as *McFarland v. Weil*, Slip Copy, 2006 WL 2045696 (C.A.7 (Ill.)) (July 21, 2006); It is reproduced at the Separate Appendix at 1a. The Memorandum and Order of the District Court, dated September 21, 2004, granting the defendants' motions to dismiss is unreported and reproduced at the Separate Appendix at 9a. The order of the Circuit Court dated August 23, 2006, denying petition for rehearing is unreported and reproduced at the Separate Appendix at 18a..

JURISDICTION

The Court of Appeals entered its order on July 21, 2006, which is the subject of this petition. Plaintiff filed petition for rehearing on August 4, 2006, which was denied by the Seventh Circuit by order dated August 23, 2006. This petition is timely under 28 U.S.C. § 2101 and Supreme Court Rule 13.3 because it is being filed within 90 days of the entry of the order disposing of the petition for rehearing. This court has jurisdiction to review the order of the Court of Appeals pursuant to 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and the Hobbs Act, 18 U.S.C. § 1951, both set out in Appendix at App. 14 and 15 respectfully.

STATEMENT OF THE CASE

The jurisdiction of the district court was predicated on 28 U.S.C. § 1331 involving a general federal question. Plaintiff's federal claim is based upon allegations that the defendants violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO") the predicate acts thereof included, inter alia, threats of extortion in violation of the Hobbs Act, 18 U.S.C. § 1951. The defendants filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Since those motions were granted by the district court the record consists of only the plaintiff's Second Amended Complaint.

A. Summary of Allegations of the Second Amended Complaint

Carl G. Hogan, Sr., died in January of 2001. His three sons, Carl Jr., Brian and David (the "Hogans") were the co-executors of his estate. They engaged attorney Paul Weil of the law firm of Bryan Cave LLP, to prepare and file Federal Form 706 which is the federal estate tax form used to report estate tax liability. Plaintiff alleged that Weil and the Hogans formed a scheme to generate and file false state and federal estate tax returns. To do this they anticipated engaging an appraisal firm to appraise various businesses of the estate. They would then provide the appraisal firm with false information and interfere with the appraisal firm's ability to prepare accurate appraisals.

The initial conspiracy and enterprise consisted of the Hogans and Bryan Cave LLP, acting through attorney Paul Weil.

After the initial enterprise was formed, it selected and engaged the appraisal firm of Marshall & Stevens Incorporated to prepare appraisals of five businesses of the Carl G. Hogan, Sr. Estate. Plaintiff was assigned to appraise one of the five businesses and was the appraisal director over the appraisals of other four businesses.

Plaintiff submitted the draft appraisal of his assigned business on July 23, 2001. Prior to that submission, as appraisal director, had been receiving reports from the other appraisers that Paul Weil and others at Bryan Cave LLP, were asserting undue pressure on them to state fraudulent values in their appraisals. The appraisers were receiving false and misleading information from the attorneys.

On September 3, 2001, Plaintiff and some of the other appraisers and staff working on the Hogan file participated in a teleconference with Paul Weil. During that teleconference Paul Weil attempted to influence Plaintiff's value conclusions by asserting false information. Plaintiff opined it would be illegal and unethical to go along with Weil and refused to modify his appraisal. Paul Weil responded by threatening Plaintiff. Weil told Plaintiff that he would "ruin" Plaintiff's career and lively hood. That he would email every law firm in St. Louis and see to it that Plaintiff would never work as an appraiser again if he didn't join the enterprise. These threats were made in violation of the Hobbs Act, 18 U.S.C. § 1951.

After the teleconference, Plaintiff concluded that all five of the business appraisals had been illegally influenced and that it would be a felony for his firm to

provide final appraisals. On at least two occasions Plaintiff advised the CEO of his firm of his conclusions.

At this point in time neither Marshall & Stevens Incorporated nor any of its employees or agents were in any way involved in the illegality of the scheme. They were acting at arm's length as appraisers. They were in no way involved in threatening Plaintiff or trying to influence his appraisal.

However, soon after Plaintiff advised the CEO of the illegality of continuing with the appraisals, Marshall & Stevens Incorporated renegotiated its fee with the law firm and agreed to join the enterprise. The new conspiracy agreement specifically provided that Plaintiff would be removed from working on the Hogan file and later terminated from Marshall & Stevens Incorporated.

The new conspiracy agreement was carried out. The enterprise, which Marshall & Steven Incorporated had now joined, removed Plaintiff from the Hogan file and later terminated his employment.

B. The Decisions Below

District Court Judge Michael J. Reagan dismissed the second amended complaint finding that the Supreme Court's ruling in *Beck v. Prupis*, 529 U.S. 494 (2000), held that termination of an employee is never an act of racketeering activity. The District Court therefore concluded Plaintiff lacked standing to bring a RICO claim.

The Court of Appeals heard oral argument on the parties' briefs November 9, 2005. It affirmed the District

Court by unpublished order on July 21, 2006. The Court of Appeals agreed with the District Court that *Beck* barred Plaintiff's right to bring a civil RICO claim and further indicated that the present case was indistinguishable from *Beck*.

Plaintiff's allegations with respect to the Hobbs Act extortion were not addressed by the District Court. Plaintiff noted that omission in his appellate brief and the defendants included opposition to his position in their briefs. However, the *Scheidler* cases were not cited by the parties. Rather, the issues presented by those cases were raised by the Court of Appeals at oral argument.

By order dated August 23, 2006, the District Court denied Plaintiffs petition for rehearing noting that no judge in regular active service requested a vote on rehearing en banc and that all members of the original panel voted to deny the petition for rehearing.

REASONS FOR GRANTING THE PETITION

This case presents three important issues of federal law related to the interpretation of this Court's holdings in *Scheidler v. Nat'l Org. of Women*, 537 U.S. 393, 397 (2003) ("*Scheidler II*") (*held*, "that petitioners did not commit extortion because they did not 'obtain' property from respondents as required by the Hobbs Act"); and *Beck v. Prupis*, 529 U.S. 494, 505 (2000) (*held*, "that injury caused by an overt act that is not an act of racketeering or otherwise unlawful under RICO, is not sufficient to give rise to a cause of action under § 1964(c) for a violation of § 1962(d). The Seventh Circuit has decided this case in direct conflict and derogation to

both of these benchmark holdings warranting certiorari.

The Seventh Circuit's decision provided an erroneous answer to the important question of whether property has been obtained for purposes of extortion under the Hobbs Act. It concluded that the extortionate threats by an attorney to force an appraiser to produce a false appraisal report were not an attempt to acquire any value in property. The Court of Appeals' decision is in direct conflict of this Court's decision in *Scheidler II* and the meaning of the Hobbs Act.

The Seventh Circuit's decision provided an erroneous answer to the important question of whether an overt act done in furtherance of a RICO conspiracy is an act of racketeering or otherwise wrongful under RICO. It concluded termination of employment *can never* qualify as a predicate act under RICO. The Court of Appeal's decision is in direct conflict this Court's decision in Beck v. Prupis and the meaning of the RICO.

Finally, the Circuit Court refused to address Plaintiff's argument that if the conspiracy agreement, *by its terms*, authorized the act that caused Plaintiff's injury, then it was therefore "otherwise wrongful" under RICO. The resolution of this issue is an important question of federal law that has not been, but should be, settled by this Court.

The following discussion compels the finding that a writ of certiorari should be granted by this Court.

I. The Decision Below Undermines this Court's Decision in *Scheidler II* and the Hobbs Act

In *Scheidler v. Nat'l Org. of Women*, 537 U.S. 393 (2003), this Court determined that anti abortion protestors did not commit extortion under the Hobbs Act by their attempts to destroy the business of the abortion clinics. The court concluded that the protestors did not obtain property from the clinics as required by the Hobbs Act. It concluded further that the protestors did not pursue an effort to gain any control of those interests for themselves, something which "they could exercise, transfer, or sell" *Id.* at 405.

The Seventh Circuit applied that ruling to the present case concluding an attorney's threats to obtain a valuable false document were not extortion for lack of property being obtained. For reasons below this is an unequivocal error in understanding this Court's analysis in *Scheidler.*

(a) THE HOBBS ACT

The relevant portions of the Hobbs Act (18 U.S.C § 1951) are set out in the Appendix hereto at 15a. However, the more portions pertinent to this petition are summarized here.

The criminal provision of the Hobbs Act is subsection (a). That section provides that anyone who obstructs commerce by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan in violation of this section is guilty of extortion. Subsection (b) defines "robbery" as the unlawful taking or obtaining of property from another, against his will, by means of violence or threats thereof. It defines "extortion" as the same taking of property by same

means except by consent of the victim.

(b) *SCHEIDLER I, II & III*

The defendants in *Scheidler* included antiabortion groups and individuals that were bent on shutting down abortion clinics through aggressive protesting. *See Scheidler I, National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994), (reversed on issues unrelated to the issues of this appeal. *Id.* at 256-262). The dispute came before the Court again in *Scheidler II, Scheidler v. Nat'l Org. of Women*, 537 U.S. 393, 399, (2003), on review of civil RICO judgments against the defendants for extortion under the Hobbs Act. The conduct by defendants at issue was interfering with and obstructing the women's right to medical services, the medical doctors' right to provide medical services, and the clinics' rights to carry on their businesses. *See Scheidler v. Nat'l Org. of Women*, 537 U.S. 393, 399 (2003).

This Court determined in *Scheidler II* that there was no acquisition of property by the protestors' attempts to shut down the abortion clinics. Although they were attempting to destroy the business interests of the doctors and the clinics, they did not pursue an effort to gain control of those interests for themselves, which "they could exercise, transfer, or sell". *Scheidler*, 537 U.S. at 404, 405, 123 S.Ct. at 1065, 1066.

For reasons unrelated to the issues now before the bar, *Scheidler III* , *Scheidler v. National Organization of Women*, 126 S.Ct. 1264, 1267 (2006) came before this Court on the issue of whether four other "acts of violence, or threats thereof" not argued in *Scheidler II*,

might support a RICO violation predicated on violence proscribed by the Hobbs Act but not related to extortion. *Id.* at 1266. But this Court held, "that physical violence unrelated to robbery or extortion falls outside the scope of the Hobbs Act". *Id.* at 1270.

Implications can be drawn from these two opinions which will certainly plague the Court's docket, absent clarification.

Scheidler II refused to ascertain the outer boundaries of extortion liability under the Hobbs Act but proceeded to declare intangible rights are not protected property rights if the extortionist does not obtain a benefit in the forfeiting interests that he can "exercise, transfer or sell". Where does that leave the many circuit cases like *United States v. Tropiano*, 418 F.2d 1069, 1075 (2nd Cir. 1969)? That case involved competing trash collection businesses wherein it was upheld that the efforts to drive one of them out of business constituted extortion because the customer accounts had value. But in reality, the extortionist there wasn't obtaining control over those interests. He was only making his likelihood of success more probable by eliminating the competition. This conflict will cause immense confusion for any attorney for a plaintiff bringing an action for business interests in any remotely similar in facts to *Tropiano*.

For instance, is it now the law of the land that the characterization of your injury by violence and threat thereof is controlled by the subjective intent of the extortionists? Had the defendants in *Scheidler* been employees and staff of a competing clinic using the same tactics to shut its competitor down, would the same

result have been reached?

Or, suppose a Marxist activist phones into a bank and tells them to burn all of their cash out in the street or he'll blow up the bank. Can he escape prosecution because he, nor anyone else, obtained anything that could be exorcized, transferred, or sold?

Has *Scheidler III* essentially merged the impact on "commerce" requirement in section (a) of the Hobbs Act with the property requirement for extortion in (b)(2)? In other words, the Court has effectively made the target of one's extortion executory to obstructing, delaying or affecting commerce. It would then reasonably follow that if the property obtained doesn't have an effect on commerce, there is no extortion.

These questions are posed to illustrate the challenges the circuit courts will face in trying to address them without further guidance by this Court. That challenge will certainly divide the circuits by erroneous conclusions like the Seventh Circuit's opinion in this case.

(c) CIRCUIT COURT'S DECISION

The Seventh Circuit opined that a terminated employee cannot bring a RICO cause based on a Hobbs Act threat of extortion because no property of value flows to the person making the threat. At page three of its unpublished opinion it concluded:

> On appeal, McFarland also argues that the district court failed to consider his claim against the Defendants for violation of the Hobbs Act. His second

amended complaint, however, alleges no set of facts that constitute extortion under the Hobbs Act. See *Scheidler v. Nat'l Org. of Women*, 537 U.S. 393, 404 (2003) (The "extortion provision of the Hobbs Act ... require[s] not only the deprivation, but also the acquisition of property."). The only property at issue in this case is the valuation report. McFarland's complaint concedes that this report was not his own property, but instead was something that he created as an employee of M&S under the direction of Bryan Cave and for use by the Hogans. He has no right to pursue a claim that the defendants wrongfully acquired *their own* appraisal reports.

The circuit court places emphasis on two points in trying to analyze the opinion in *Scheidler II* regarding the acquisition of property. First it notes, by its assessment, that McFarland did not own the appraisal report. Second, it asserts, though incorrectly, that McFarland's employer, and the others, cannot wrongfully acquire their own property. [1]

(d) MCFARLAND'S CASE

The underlying facts in the present case clearly illustrate the Circuit Court's error in applying *Scheidler II* to the property at issue.

FN1 - Both points were factually incorrect in that McFarland's employer was not a member of the conspiracy when that attorney made the threats, and for reasons stated in the legal argument below, what the attorney wanted McFarland factually owned.

Prior to *Scheidler II*, the Seventh Circuit, and most other circuits, found little difficulty upholding extortion cases in which the extortionist didn't own the property or had some legal right to it. *See (United States v. Green*, 350 U.S. 415 (1956)) (union employee extorted fees for unwanted services by other members, not his own benefit); *U.S. v. Sweeney*, 262 F.2d 272 (3rd Cir. 1959) (employee ignored contract with employer and extorted fees for workers, not himself); *Robbins V. Wilkie*, 433 F.3d 755 (10th Cir. 2006) (cannot pursue legal right to easement through extortion even if you have a legal right to pursue it for government); and *United States v. Castor*, 937 F.2d 293, 299 (7th Cir.1991) (contractual rights is no defense to extortion of those rights).

Addressing McFarland's claim, it appears the Circuit Court distorted the meaning of property under the Hobbs Act as determined by the this Court in *Scheidler II*. The initial allegations were that the Hogans and the law firm conspired in violation of RICO to commit tax fraud on the state and federal governments. For that purpose they needed something from McFarland, something that might be worth millions in tax savings. Something that did not exist and would not exist unless they exerted pressure on McFarland. They needed a false or fraudulent report, which didn't exist because it is clear McFarland presented them with the honest one he prepared which they did not like.

So, it is further alleged, in order to further the conspiracy, they resorted to extortion to get McFarland to produce want they wanted, the false appraisal report which no doubt was valuable to their pursuits. The extortion attempts at first consisted of threats made by the attorney before McFarland's employer had joined

the scheme.

Based on the initial events of the extortion attempts, McFarland has pled enough for a valid claim under the Hobbs Act. He was threatened by the attorney to give up a false report and the labor it took to produce the same, in return for the attorney not destroying his career. Contrary to the Seventh Circuit's conclusions, the sought after appraisal had considerable value to the extortionists in ripping off the government in taxes.

In light of this Court's decision in *Scheidler II*, McFarland's Hobbs Act extortion claim should not have been dismissed since the property attempted to be acquired had actual and substantial value that would have ended up in the hands of the extortionists. Further, absent review by this Court, other circuits will obviously make similar and repeated errors.

II. The Decision Below Undermines this Court's Decision in *Beck v. Prupis* and the RICO Act

The Seventh Circuit's decision provided an erroneous answer to the important question of whether an overt act done in furtherance of a RICO conspiracy is an act of racketeering or otherwise wrongful under RICO. The Circuit Court has effectively amended the RICO Act by creating a new federal law that excepts all "terminated employees" from ever claiming they are victims of any predicate act enumerated under § 1961(1) of the RICO Act. This new exception will have a chilling effect on the jurisprudence of RICO if not addressed by this Court. An absolute rule that defines every "terminated employee" as an exception to the application of the

underlying racketeering offenses under RICO, is a derogation to the RICO Act and the fundamental principles of proximate-cause established by this Court's opinions in *Sedima, Holmes. Anza* and even more particularly *Beck v. Prupis.*

Therefore, this Petition should be granted to resolve the issues presented by the Seventh Circuit's apparent usurpation of the powers of the legislative branch.

In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 (1985), this Court recognized a less stringent requirement for pleading in that a plaintiff does not have to establish some type of racketeering injury as opposed to one caused by predicate acts enumerated in § 1961(1). The Court concluded:

> But the statute [RICO] requires no more than this. Where the plaintiff alleges each element of the violation [§ 1962(a)-(c)], the compensable injury necessarily is the harm caused by predicate acts [§ 1961(1)] sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise.

Sedima, S.P.R.L. v. Imrex Co. 474 U.S. at 497. The Court's ruling negated the suggestion that something more than a predicate act must cause the injury to succeed in a RICO claim. However, it should be noted that a conspiracy claim under § 1962(d) was not before the Court, rather it was the substantive violation under subsection (c) thereto.

The inquiry to proximate-cause of RICO injuries

begins with *Sedima* and provides that, other than conspiracies, the plaintiff prosecuting a substantive offense who successfully pleads the cause, is not required to prove the injury was caused by anything other than the predicate acts. Accordingly, the Court did not foreclose the possibility a claim for injury caused by an act that was not a predicate act.

The issue of injuries caused by conspiracies under RICO was later taken up by this Court in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992). If you applied a "but for" test to a RICO conspiracy, it is conceivable one could connect just about any injury to a RICO conspiracy by factual circumstances. A conspiracy to run an auto theft operation will undoubtedly injure the insurers of the stolen vehicles. The Court in *Holmes* was faced with this type of RICO injury claim due to a conspiracy involving a stock price manipulation scheme. *Id* at 261-262. The Court observed that justice required some type of limit for one's responsibility for his wrongs. In addition to requiring a factual connection to the injury or "but for" test, the Court ruled that "proximate cause" would be required for RICO injuries. *Id.* at 268-269.

Although no hard rule is gained by *Holmes* in determining what the "limit" of one's responsibility is under RICO, the Court strongly implied a claim for harm based on wrongs done to a third person by defendant would be deemed "to remote" for recovery. *Id.* at 268-269.

This Court revisited injuries related to RICO conspiracies in *Beck v. Prupis*, 529 U.S. 494 (2000). At issue was the termination of an employee which was an

overt act in furtherance of the underlying wire and mail fraud RICO conspiracy, but not a predicate act as defined by the statute. *Id.* at 498-499. The Court held, "that injury caused by an overt act that is not an act of racketeering *or otherwise wrongful under RICO*, is not sufficient to give rise to a cause of action. . . ." *Id.* at 505. Although the Court found the circumstances of the plaintiff's termination did not constitute a predicate act, it did not proclaim the act of termination could never amount to a predicate act under § 1961(1).

Recently before this Court were two competitors in the same line of business, one of which claimed a RICO injury due to the other's tax fraud and wire fraud scheme to avoid paying state sales taxes which allegedly gave it an economic advantage over the plaintiff. *See Anza v. Ideal Steel Supply Corp.*, 126 S.Ct. 1991 (2006). Resting its analysis primarily on *Holmes,* the Court determined that the plaintiff's injury due to the defendant's scheme of not paying sales taxes failed the proximate-cause test as being too remote. *Id* at 1996-1997. The Court noted that the "direct victim " of the tax scheme was the state, not the plaintiff, and that it had previously indicated in *Sedima*, that an injury flowing from a substantive RICO offense is the harm caused by the predicate acts that established the pattern. *Id.* at 1996.

Turning to the plaintiff's plight in this matter, the Seventh Circuit ascertained that *Beck* mandated that a terminated employee can never bring a civil RICO action if the only damages claimed were from his of employment. It reached this conclusion by its reading of the Court's opinion in *Beck*. But that is not the conclusion reached in *Beck*. Rather, the Court

concluded the overt act of which a plaintiff complains must be either an act of racketeering (predicate act) or otherwise unlawful under the RICO. *Beck* v. *Prupis*, at 507.

The facts clearly lend favor to the possibility that McFarland's termination was in fact a predicate act, to wit; the alleged extortion in violation of the Hobbs Act, 18 U.S.C. § 1951, discussed above. The plaintiff had alleged that the attorney, the law firm and the Hogans initially conspired to "generate false state and federal estate tax returns for" the Hogan Estate by acquiring false appraisal reports. (Second Amended Complaint, page 7). The conspiracy consisted of a "scheme" to engage an appraisal firm to conduct appraisals for which the conspirators would provide false information to cause false appraisal reports. *Id.* at 7. The first mention of a predicate act in the complaint was the rendition of the threats by the attorney which were alleged to be a violation of the Hobbs Act. *Id.* at 10. The first racketeering activity alleged to be contemplated by the enterprise was violating 18 U.S.C. § 1957 in that the enterprise sought to engage in monetary transactions involving criminally derived money through disbursements by the Hogan Estate. *Id.* at 12. The next predicate act alleged, was another reference to the Hobbs Act threats which were "committed in furtherance of the conspiracy and as a necessary component" thereof. *Id.* at 13. It is finally alleged that "contemplated in the conspiracy" was that they would "necessarily violate" the mail fraud and wire fraud provisions to communicate to facilitate the scheme. *Id.* at. 13-14.

With the layout of the conspiracy and predicate acts, together with the analysis of the application of the

Hobbs Act above, it is almost without argument that the plaintiff's termination was a predicate act as part of the Hobbs Act violation. Therefore the implications of *Beck* should not bar the plaintiff's claim as the Seventh Circuit has erroneously concluded.

It took this Court over 20 years to carefully work through the analysis related to the proximate-cause of RICO injuries beginning with *Sedima* and continuing up until recently with *Anza*. Yet, the Seventh Circuit has readily deprived the plaintiff from having his day in court by creating new federal law that excludes the plaintiff from application of the predicate acts. Many others finding themselves in similar situations to the plaintiffs will also be barred unless certiorari is granted.

III. "Otherwise Wrongful" Act Under RICO

The plaintiff argued before the Seventh Circuit that in the alternative, the second conspiracy agreement in which the plaintiff's employer joined, and which specifically called for the plaintiff's termination, was "otherwise wrongful" under RICO and should therefore provide standing for Plaintiff's claim.

This Court in *Beck v. Prupis*, 529 U.S. 494 (2000), held that injury caused by an overt act not a predicate act or *"otherwise wrongful under RICO"* is not actionable in RICO conspiracy. *Id.* at 505. (emphasis added).

The emphasized wording above was not included in the 11th Circuit's lower opinion in *Beck v. Prupis*, 162 F.3d 1090 (11th Cir. 1998). This Court's insertion of that additional language must imply there might be RICO standing for an injury caused by conduct that is not a

predicate act but which might be otherwise unlawful under RICO. The only provision of § 1962 which makes acts other than acts of racketeering unlawful, is § 1962(d), which makes it unlawful for any person to conspire to violate subparagraphs (a). (b) or (c), of § 1962. One can deduce that since the only provision of RICO that makes something other than the substantive acts wrongful, is § 1962(d), any act that is otherwise wrongful has to be expressly authorized in the conspiracy agreement. Nothing else is made wrongful by the wording of the RICO Act.

Plaintiff alleged that the initial conspiracy agreement in the present case did not include his employer nor anyone else in his firm. The lawyers and the Hogans were the only members and hoped to accomplish their goal by deceiving the appraisers. When all attempts by them failed to influence the plaintiff, it is alleged the enterprise then sought out the plaintiff's employer, renegotiated its fee with them to entice them to join the conspiracy, for the specific purpose of exerting additional pressure on the plaintiff and terminating him if all else failed. Thereafter, a second conspiracy agreement was formed which included the plaintiff s employer and the specific authorization, if not the mandate, of his termination.

If § 1962(d) makes it illegal to conspire to violate (a), (b) or (c), then the agreement itself is illegal. It would follow that any specific acts directed by such an illegal agreement would themselves be illegal and actionable as "otherwise wrongful" under RICO. The conspiracy agreement of which the plaintiff complained specifically authorized his termination. He was therefore terminated by an act that was "otherwise wrongful"

under RICO.

The only other apparent possibility is by this Court's commentary that the determination of an "otherwise wrongful" act "may depend on the underlying substantive violation the defendant is alleged to have committed." *Beck v. Prupis*, at 506. The plaintiff has alleged the underlying offense of extortion under the Hobbs Act, specifically threatening his career if he did not generate a false appraisal report. Logic would compel the conclusion that his termination was directly related to the underlying charge. He was the "direct victim" of Hobbs Act threats of extortion which effectuated his termination.

This Court should expand the actionable wrongs under RICO by holding that a conspiracy under 18 U.S.C. § 1962(d) to violate subsections (a), (b) or (c), which by its terms authorizes the act which causes an injury, is the proximate-cause of that injury. At the very least, whether or not the Court should make such a holding is an important question of federal law which should be settled by this Court.

CONCLUSION

The foregoing reasons, a writ of certiorari should be granted.

Respectfully submitted,

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